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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/19-15089

13 **ERIC ANGELO TAVARES**
14 **705 E. Francis St.**
15 **Corona, CA 92879**

ACCUSATION

16 **Smog Check Inspector License No. EO**
17 **636663**

Respondent.

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21 **PARTIES**

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23 1. Patrick Dorais (“Complainant”) brings this Accusation solely in his official capacity
24 as the Chief of the Bureau of Automotive Repair (“Bureau”), Department of Consumer Affairs.

25 2. On or about March 24, 2014, the Bureau issued Smog Check Inspector License
26 Number EO 636663 to Eric Angelo Tavares (“Respondent”). The Smog Check Inspector License
27 was in full force and effect at all times relevant to the charges brought herein and will expire on
28 March 31, 2022, unless renewed.

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4. Health and Safety Code section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

6. Section 118, subdivision (b), of the Code provides that suspension, expiration, surrender, or cancellation of a license shall not deprive the Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

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1 no earlier than January 1, 2013. However, the department, in consultation with the state board,
2 may prescribe alternative test procedures that include loaded mode dynamometer or two-speed
3 idle testing for vehicles with onboard diagnostic systems that the department and the state board
4 determine exhibit operational problems. The department shall ensure, as appropriate to the test
5 method, the following:

6 (a) Emission control systems required by state and federal law are reducing excess
7 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of
8 Section 44013.

9 (b) Motor vehicles are preconditioned to ensure representative and stabilized operation of
10 the vehicle's emission control system.

11 (c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of
12 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded
13 mode are tested in accordance with procedures prescribed by the department. In determining how
14 loaded mode and evaporative emissions testing shall be conducted, the department shall ensure
15 that the emission reduction targets for the enhanced program are met.

16 (d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and
17 crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic
18 compound emissions, in accordance with procedures prescribed by the department.

19 (e) For diesel-powered vehicles, a visual inspection is made of emission control devices and
20 the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the
21 department, that may include, but are not limited to, onboard diagnostic testing. The test may
22 include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon
23 the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

24 (f) A visual or functional check is made of emission control devices specified by the
25 department, including the catalytic converter in those instances in which the department
26 determines it to be necessary to meet the findings of Section 44001. The visual or functional
27 check shall be performed in accordance with procedures prescribed by the department.

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1 (g) A determination as to whether the motor vehicle complies with the emission standards
2 for that vehicle's class and model-year as prescribed by the department.

3 (h) An analysis of pass and fail rates of vehicles subject to an onboard diagnostic test and a
4 tailpipe test to assess whether any vehicles passing their onboard diagnostic test have, or would
5 have, failed a tailpipe test, and whether any vehicles failing their onboard diagnostic test have or
6 would have passed a tailpipe test.

7 (i) The test procedures may authorize smog check stations to refuse the testing of a vehicle
8 that would be unsafe to test, or that cannot physically be inspected, as specified by the department
9 by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the
10 vehicle from compliance with all applicable requirements of this chapter.”

11 9. Section 44015 of the Health and Safety Code, subdivision (b), states:

12 (b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to
13 issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

14 10. Section 44032 of the Health and Safety Code states:

15 “No person shall perform, for compensation, tests or repairs of emission control devices or
16 systems of motor vehicles required by this chapter unless the person performing the test or repair
17 is a qualified smog check technician and the test or repair is performed at a licensed smog check
18 station. Qualified technicians shall perform tests of emission control devices and systems in
19 accordance with Section 44012.”

20 11. Section 44059 of the Health and Safety Code states:

21 “The willful making of any false statement or entry with regard to a material matter in any
22 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
23 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
24 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.”

25 12. Section 44072.2 of the Health and Safety code states, in pertinent part:

26 “The director may suspend, revoke, or take other disciplinary action against a license as
27 provided in this article if the licensee, or any partner, officer, or director thereof, does any of the
28 following:

1 (a) Violates any section of this chapter and the regulations adopted pursuant to it, which
2 related to the licensed activities.

3 ...

4 (c) Violates any of the regulations adopted by the director pursuant to this chapter.

5 (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

6 ...

7 (h) Violates or attempts to violate the provisions of this chapter relating to the particular
8 activity for which he or she is licensed.”

9 13. Section 44072.8 of the Health and Safety Code states:

10 “When a license has been revoked or suspended following a hearing under this article, any
11 additional license issued under this chapter in the name of the licensee may be likewise revoked
12 or suspended by the director.”

13 **REGULATORY PROVISIONS**

14 14. California Code of Regulations, title 16, section 3340.30, subdivision (a), states:

15 “A licensed smog check inspector and/or repair technician shall comply with the following
16 requirements at all times while licensed:

17 (a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
18 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
19 article.

20 ...

21 15. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:

22 “(c) No person shall enter into the emissions inspection system any vehicle identification
23 information or emission control system identification data for any vehicle other than the one
24 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
25 information about the vehicle being tested.”

26 16. California Code of Regulations, title 16, section 3340.45, states:

27 “(a) All Smog Check inspections shall be performed in accordance with requirements and
28 procedures prescribed in the following:

1 (1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby
2 incorporated by reference. This manual shall be in effect until subparagraph (2) is implemented.

3 (2) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This
4 manual shall become effective on or after January 1, 2013.”

5 17. California Code of Regulations, title 16, section 3373, states:

6 “No automotive repair dealer or individual in charge shall, in filling out an estimate,
7 invoice, or work order, or record required to be maintained by section 3340.15(e) of this chapter,
8 withhold therefrom or insert therein any statement or information which will cause any such
9 document to be false or misleading, or where the tendency or effect thereby would be to mislead
10 or deceive customers, prospective customers, or the public.”

11 **COST RECOVERY**

12 18. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licentiate found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
16 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
17 included in a stipulated settlement.

18 **FACTUAL ALLEGATIONS**

19 19. The OBD II communication protocol describes the specified communication
20 “language” used by the OBD II system electronic control unit to communicate to scan tools and
21 other devices such as the On-Board Diagnostic Inspection System (OIS). The communication
22 protocol is programmed into the OBD II system electronic control unit during manufacture and
23 does not change.

24 20. Parameter Identifications (PIDs) are data points reported by the OBD II system
25 electronic control unit to the scan tool or On-Board Diagnostic Inspection System. Examples of
26 Parameter Identifications are engine speed (rpm), vehicle speed, engine temperature, and other
27 input and output values utilized by the OBD II system electronic control unit. The PID count is
28 the number of data points reported by the OBD II system electronic control unit, and is

1 programmed during manufacture.

2 21. The Vehicle Identification Number that is physical present on all vehicles is also
3 required to be programmed into the vehicle's On-Board Diagnostics – Generation II (OBD II) on
4 2005 and newer vehicles, and on many occasions was programmed into the OBD II system
5 electronic control unit in earlier model-years. This electronically programmed Vehicle
6 Identification Number, also known as the “eVIN,” is captured by the Bureau during a Smog
7 Check and should match the physical Vehicle Identification Number on the vehicle.

8 22. A Bureau representative conducted a detailed review of the BAR97 OBDII VID data
9 for Smog Check inspections requiring the OBDII functional portion performed at Corey's Smog.
10 The following five (5) vehicles were certified with pending code(s) P1516 and P2135 stored in
11 the PCM memory, when the Original Equipment Manufacturer (OEM) service information,
12 Alldata, and Mitchell Pro Demand shows these vehicles do not support all or some of the code(s).
13 This confirms the vehicles receiving smog certificates were not tested during the OBDII
14 functional test and another vehicle or source was used, which constitutes clean plugging.¹

15 23. **Fraudulent Inspection Number 1, April 10, 2019**

16 Between 1004 and 1015 hours on April 10, 2019, a 1998 Dodge Ram 1500, California
17 license number DP940WH, was tested and Certificate of Compliance number QQ545538C was
18 issued under licensed Smog Check inspector EO636663, issued to Respondent. The BAR97 Test
19 Detail shows codes P1516 and P2135 were stored in the PCM memory at the time of certification.
20 Service information shows codes P1516 and P2135 do not apply to a 1998 Dodge Ram 1500.

21 24. **Fraudulent Inspection Number 2, May 21, 2019**

22 Between 1410 and 1437 hours on May 21, 2019, a 1997 Dodge Ram 1500, California
23 license number 5J98457, was tested and Certificate of Compliance number QS656513C was
24 issued under licensed Smog Check inspector EO636663, issued to Respondent. The BAR97 Test
25 Detail shows codes P1516 and P2135 were stored in the PCM memory at the time of certification.

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27 ¹ Clean plugging refers to the use of another vehicle's properly functioning On Board
28 Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic
readings for the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that
are not in smog compliance and/or not present for testing.

Service information shows codes P1516 and P2135 do not apply to a 1997 Dodge Ram 1500.

25. **Fraudulent Inspection Number 3, May 21, 2019**

Between 1439 and 1455 hours on May 21, 2019, a 1998 Lexus LS 400, California license number 4NCM452, was tested and Certificate of Compliance number QS656514C was issued under licensed Smog Check inspector EO636663, issued to Respondent. The BAR97 Test Detail shows codes P1516 and P2135 were stored in the PCM memory at the time of certification.

Service information shows code P1516 does not apply to a 1998 Lexus LS 400.

26. **Fraudulent Inspection Number 4, May 21, 2019**

Between 1539 and 1555 hours on May 21, 2019, a 1998 Chevrolet C2500 pickup, California license number 5U07813, was tested and Certificate of Compliance number QS656515C was issued under licensed Smog Check inspector EO636663, issued to Respondent. The BAR97 Test Detail shows codes P1516 and P2135 were stored in the PCM memory at the time of certification. Service information shows codes P1516 and P2135 do not apply to a 1998 Chevrolet C2500 pickup.

27. **Fraudulent Inspection Number 5, May 22, 2019**

Between 0953 and 1007 hours on May 22, 2019, a 1997 Ford F150 Super Cab Short, California license number 5N26105, was tested and Certificate of Compliance number QS656516C was issued under licensed Smog Check inspector EO636663, issued to Respondent. The BAR97 Test Detail shows codes P1516 and P2135 were stored in the PCM memory at the time of certification. Service information shows code P2135 does not apply to a 1997 Ford F150 Super Cab Short.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

28. Complainant re-alleges and incorporates by reference the allegations set forth in paragraphs 19 through 27.

29. Respondent has subjected his Smog Check Inspector License to disciplinary action under section 9889.22, in that Respondent willfully made false statements or entries with regard to a material matter on the certificates of compliance issued for the vehicles at issue.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Programs)**

3 34. Complainant re-alleges and incorporates by reference the allegations set forth in
4 paragraphs 19 through 27.

5 35. Respondent has subjected his Smog Check Inspector License to disciplinary action
6 under Health and Safety Code section 44072.2, subdivision (c), in that Respondent failed to
7 comply with the following sections of title 16, California Code of Regulations:

8 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the
9 vehicles at issue in accordance with Health and Safety Code section 44012.

10 b. **Section 3340.41, subdivision (c):** Respondent entered false information into
11 the EIS for the certificates of compliance by entering vehicle emission control information for a
12 vehicle other than the vehicles being certified.

13 c. **Section 3340.45:** Respondent failed to perform smog check inspections on the
14 vehicles at issue as prescribed in the operative Smog Check Manual.

15 **DISCIPLINE CONSIDERATIONS**

16 36. Respondent was previously given a Proactive Conference on or about September 14,
17 2017 for issuing a Certificate of Compliance to a vehicle using the BAR97 Emission Inspection
18 System (EIS) when an On-Board Diagnostic Inspection System (OIS) test was required.
19 Respondent was advised that failure to comply with provisions of the Automotive Repair Act
20 could result in disciplinary action.

21 **OTHER MATTERS**

22 37. Under Health and Safety Code section 44072.8, if Respondent's Smog Check
23 Inspector License No. EO 636663 is revoked or suspended, any additional license issued under
24 Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, in the name of Respondent may
25 be likewise revoked or suspended by the Director.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Revoking or suspending Smog Check Inspector License Number EO 636663, issued to Eric Angelo Tavares;

2. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Eric Angelo Tavares;

3. Ordering Eric Angelo Tavares to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

4. Taking such other and further action as deemed necessary and proper.

DATED: March 4, 2020

Signature on File

PATRICK DORAIS

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

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